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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PRASAD P. PADIYAR, KISHORE KARIGHATTAM,
and HARISH VASUDENVA

Appeal 2009-014747
Application 10/701,092
Technology Center 2400

Before GREGORY J. GONSALVES, DAVID M. KOHUT and
JULIE K. BROCKETTI, *Administrative Patent Judges*.

BROCKETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Introduction

Appellants appeal under 35 U.S.C. § 134 (a) from a final rejection of claims 1-22. We have jurisdiction under 35 U.S.C. § 6(b).

Exemplary Claims

Exemplary independent claim 1 under appeal reads as follows:

1. A network station comprising:

a network device having a collision counter that tracks collisions and an inter packet gap unit that is programmable; and

a dynamic IPG determiner that obtains collision counts from the collision counter, dynamically generates an IPG value that is a function of the collision counts and programmable parameters, wherein the programmable parameters include at least one of:

a range of IPG values;

a convergence time; and

a stable state time, and

programs the inter packet gap unit with the dynamically generated IPG value.

Exemplary dependent claim 8 under appeal reads as follows:

8. The station of claim 1, wherein the dynamically generated IPG value is a function of an IPG range, a step value, a convergence time, and a stable state time.

Rejections on Appeal[1]

1. The Examiner rejected claims 1, 2, 4, 6, 8-11, and 13-21 under 35 U.S.C. § 102(b) as being anticipated by Ramakrishnan (US 5,418,784).

2. The Examiner rejected claims 3, 5, and 22 as being unpatentable under 35 U.S.C. § 103(a) in view of Ramakrishnan.

3. The Examiner rejected claim 7 as being unpatentable under 35 U.S.C. § 103(a) in view of Ramakrishnan in further view of Johnson (US 6,222,850).

4. The Examiner rejected claim 12 as being unpatentable under 35 U.S.C. § 103(a) in view of Ramakrishnan in further view of Fellman (US 6,751,231).

Appellants' Contentions

Appellants contend:

> Ramakrishnan does not anticipate the invention of claim 1, 10, and 13, as Ramakrishnan does not disclose a dynamic IPG determiner that generates an IPG value that is a function of programmable parameters.

(App. Br. 5).

> Ramakrishnan's "slot time" and "time after collision" are not equivalent to the "stable state time" and the "convergence time" of the invention of claims 1, 10, and 13.

(Reply Br. 5).

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[1] We note that the Examiner's rejection of claim 3 under 35 U.S.C. § 112, first paragraph, and claims 5, 15, 16, and 18-20 under 35 U.S.C. § 112, second paragraph are not grounds of rejection being reviewed on appeal. As such, these claims remain rejected for the reasons stated by the Examiner on pages 3-4 of the Examiner's Answer.

> Ramakrishnan does not disclose or suggest using a convergence time, or a stable state time, for generating IPG values, as set forth in claims 8 and 17.

(App. Br. 9).

> [T]he "time between detected collisions" of the cited reference is not a "steady state time" as claimed in claim[s] 3 and 22.

(App. Br. 10).

Issues on Appeal[2]

Did the Examiner err in rejecting claims 1, 2, 4, 6, 9-11, 13-16, and 18-21 because Ramakrishnan does not disclose the disputed claim limitation of "programmable parameters"?

Did the Examiner err in rejecting claims 8 and 17 because Ramakrishnan does not disclose using a convergence time and a stable state time for generating IPG values?

Did the Examiner err in rejecting claims 3 and 22 because Ramakrishnan does not disclose a steady state time period?

ANALYSIS

We have carefully reviewed the Examiner's rejection in light of the Appellants' arguments and the Examiner's response. As a result of this review, we find that Ramakrishnan anticipates claims 1, 2, 4, 6, 9-11, 13-16, and 18-21 and claims 3 and 22 are obvious over Ramakrishnan. We further find that Ramakrishnan does not anticipate claims 8 and 17. Our reasons follow.

[2] Separate patentability is not argued for claims 2, 4, 6, 9, 11, 12, and 14-21.

Appellants allege that the term "programmable" commonly refers to something that is capable of being programmed. (Reply Br. 2). We agree. Appellants additionally allege that the term "being programmed" refers to a result of programmed instructions, where instructions are input to something that is being programmed. (Reply Br. 2). Appellants further state that the Specification defines the term "programmable parameters" as "multiple stations [that] can be controlled and programmed by a network coordinator that sets programmable parameters for dynamic IPG generation." (App. Br. 6 (emphasis omitted)). Appellants therefore contend that "[t]he [S]pecification is clearly defining programmable parameters as those that a network coordinator can set (program)." (*Id*).

Appellants argue that Ramakrishnan does not disclose using programmable parameters which include, according to Appellants' claim, at least one of (a) a range of IPG values; (b) a convergence time; and (c) a stable state time, to generate an IPG value (claim 1). Appellants further contend that Ramakrishnan automatically generates an IPG value based upon collision detection that is not programmable, as defined by Appellants' Specification. (App. Br. 7). We note that contrary to Appellants' assertion, Appellants' claim does not state that an IPG value is a programmable parameter. Claim 1 states that "a range of IPG values" is a programmable parameter. Appellants stipulate that the Ramakrishnan formula used to calculate IPG values includes an IPG range. (App. Br. 9). The Examiner notes that this range is from 9.6 to 51.2 microseconds and the IPG value is computed as a linearly increasing value based on the number of collisions experienced by 9.6 + 10 (N+1), with a maximum value of 51.2 microseconds. (Ans. 17-18). We therefore, conclude, based on the Examiner's findings that the IPG value range of 9.6 to 51.2 microseconds is a programmable parameter used to determine an IPG value in that it is inherent in Ramakrishnan that one had to

"program" those exact values of 9.6 or 51.2 into the system for the IPG generation formula. Therefore, since all that is required by Appellants' alternative claim language is that at least one of (a) a range of IPG values; (b) a convergence time; and (c) a stable state time is a programmable parameter we find that Ramakrishnan anticipates Appellants' claim in that Ramakrishnan discloses that a range of IPG values is a programmable parameter.

Appellants' separately argue claims 8 and 17 and contend that "Ramakrishnan does not disclose or suggest using a convergence time, or a stable state time, for generating IPG values." (App. Br. 9). We first note that for Ramakrishnan to anticipate Appellants' claim limitations, the dynamically generated IPG value must be a function of four items including: an IPG range, a step value, a convergence time, and a stable state time. *See* claims 8 and 17. Appellants stipulate that Ramakrishnan discloses that the IPG value is a function of an IPG range and a step value (App Br. 9). However, Appellants dispute that Ramakrishnan discloses using a convergence time or a stable state time for generating IPG values and that contrary to the Examiner's assertions, Ramakrishnan's "slot time" and "time after collision" are not equivalent to the "stable state time" and the "convergence time." (App. Br. 9; Reply Br. 5). We agree with Appellants and reverse the Examiner's rejection of claims 8 and 17.

Appellants have clearly defined stable state time in the Specification as "a period for which IPG values obtained remained programmed in the network device without modification." (Spec. 15, ll. 29-31). Appellants have also defined convergence time as "the time period for which the dynamic determiner 316 is permitted to obtain an improved IPG value. That is, the convergence time represents the time period in which the determiner looks for a new IPG value having the lowest number of collisions." (Spec. 12, ll. 18-21). We disagree with

the Examiner's statements that Appellants are reading limitations from the Specification into the claims (Ans. 19). We find that Appellants have clear definitions for the terms "stable state time" and "convergence time" in the Specification and our reviewing court has stated that to learn the meaning of a term in the patent claim, the Specification can be used as a dictionary. *See Toro Co. v. White Consol. Indus., Inc.*, 199 F.3d 1295, 1299 (Fed. Cir. 1999). We therefore, find that in using Appellants' Specification definitions for "stable state time" and "convergence time," Ramakrishnan does not disclose that the generated IPG value is a function of the "stable state time" and "convergence time." Furthermore, we agree with Appellants that the formula used to calculate the IPG values does not include a convergence time and stable state time in the calculation (App. Br. 9).

With respect to claims 3 and 22, Appellants allege that the "time between collisions" of Ramakrishnan is not the same as the "steady state time" defined in Appellants' Specification and recited in the claims (App. Br. 10). However, we note that claim 3 uses the term "steady state time" while claim 22 uses the term "stable state time." Appellants contend in their Appeal Brief that "steady state time" is defined in the Specification as a period of time that an IPG value remains in the inter packet gap unit while it is being used for network collision recovery and "steady state time" is not equivalent to a "time between detected collisions," as stated by the Examiner (App. Br. 10). We disagree with Appellants' argument. Since Appellants are alleging the same arguments for both claims 3 and 22 we are interpreting "steady state time" to also be "a stable state time" which is also defined in Appellants Specification as "a period for which IPG values obtained remained programmed in the network device without modification." (Spec. 15, ll. 29-31). Consequently, we construe both the terms "steady state time" and "stable state time" to be a time period for which the IPG values do not change. As

the Examiner has pointed out, Ramakrishnan discloses that the IPG value remains unchanged during a time period between collisions (Ans. 12); consequently, Ramakrishnan suggests a steady/stable state time. The Examiner has correctly made a *prima facie* case of obviousness for claims 3 and 22.

CONCLUSIONS

1. The Examiner has not erred in rejecting claims 1, 2, 4, 6, 9-11, 13-16, and 18-21 under 35 U.S.C. § 102(b) as being anticipated by Ramakrishnan (US 5,418,784); however, Appellants have established that the Examiner erred in rejecting claims 8 and 17 under 35 U.S.C. § 102(b) as being anticipated by Ramakrishnan.

2. The Examiner has not erred in rejecting claims 3, 5, and 22 as being unpatentable under 35 U.S.C. § 103(a) in view of Ramakrishnan.

3. The Examiner has not erred in rejecting claim 7 as being unpatentable under 35 U.S.C. § 103(a) in view of Ramakrishnan in further view of Johnson (US 6,222,850).

4. The Examiner has not erred in rejecting claim 12 as being unpatentable under 35 U.S.C. § 103(a) in view of Ramakrishnan in further view of Fellman (US 6,751,231).

DECISION

The Examiner's rejections of claims 1-7, 9-16, and 18-22 are affirmed.

The Examiner's rejection of claims 8 and 17 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

msc